

October 30, 1996

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON

700 Central Building
810 Third Avenue
Seattle, Washington 98104
Telephone (206) 296-4660
Facsimile (206) 296-1654

REPORT AND DECISION ON APPEAL FROM NOTICE AND ORDER.

SUBJECT: Department of Development and Environmental Services File No. E9600138

WILLIAM AND TRUDY LOONEY
Code Enforcement Appeal

Location: 10005 Myers Way South, Seattle

Owner: William A. Looney
P.O. Box 66098
Seattle, WA 98166

Appellant: William A. Looney

DECISION SUMMARY:

Division's Preliminary Recommendation: Deny appeal
Division's Final Recommendation: Deny appeal
Examiner: Deny appeal

PRELIMINARY MATTERS:

Notice of appeal received by Examiner: September 11, 1996
Statement of appeal received by Examiner: September 11, 1996
Department Preliminary Report issued: October 15, 1996

EXAMINER PROCEEDINGS:

Hearing Opened: October 29, 1996, 9:15 a.m.
Hearing Closed: October 29, 1996, 9:50 a.m.

Participants at the proceedings and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Office of the King County Hearing Examiner.

ISSUES ADDRESSED:

Uniform Housing Code: Sub-standard buildings

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On August 23, 1996, the King County Department of Development and Environmental Services issued a Supplemental Notice and Order to William Looney and David Easley concerning

property located at 10005 Myers Way South, Seattle, Washington 98168. The Supplemental Notice and Order cited violations of the Uniform Housing Code, including maintenance of a mobile home without electrical service, a water supply or proper connection to a sewage disposal system. The mobile home was also cited for an unsound exterior porch and deteriorated flooring at the front door entry. The Notice and Order also alleges an accumulation of debris and junk on the property and the existence of an attractive nuisance based on its open, unsafe and cluttered condition.

2. A timely appeal was filed by the property owner, William Looney, who does not contest the existence of the code violations but asserts that he is not liable to correct unlawful conditions pertaining to a mobile home owned by his tenant, David Easely. Mr. Easely has not appealed the Notice and Order.
3. The photographic, documentary and oral testimony submitted to the record by Code Enforcement Officer Bill Turner supports the violations cited in the Supplemental Notice and Order. Since the spring of 1996 Mr. Turner has been on the premises a number of times, the most recent having been the week before the October 29, 1996 public hearing. It appears that in March, 1996, the mobile home was occupied by two women who have now moved out of the structure. Mr. Looney testified that Mr. Easely rented the property from him some five or six years ago under a written lease with a two year term. Since the expiration of the lease, the tenancy has been on a month to month basis. Mr. Looney stated that he has not received any rent from Mr. Easely for over a year and is in the process of obtaining an eviction. Mr. Turner reported that no building permits have ever been issued for the siting on the property of the mobile home.
4. KCC 23.12.020 authorizes the issuance of a Notice and Order by the DDES Director for any violation of a land use or public health ordinance. The Notice and Order may be directed to the owner of the parcel as well as to any individual in possession of the property or otherwise responsible for the violation.
5. The violations cited in the Supplemental Notice and Order collectively constitute a public nuisance of a serious nature. While Mr. Looney as the property owner may have a civil action against his tenant Mr. Easely for breach of his rental agreement, no statutory authority exists for the proposition that a tenancy shields a property owner from civil penalties arising out of failure to abate a public nuisance after appropriate notice has been received.

CONCLUSIONS:

1. The uncontested evidence of record demonstrates that the violations of the Uniform Housing Code cited in the Supplemental Notice and Order issued to Mr. Looney on August 23, 1996 still are in existence on the property. As a sub-standard building as defined by the Uniform Housing Code, the mobile home is a public nuisance subject to abatement. In addition, the debris on the premises, the dilapidated floor and porch of the mobile home, and the fact that the abandoned structure is open to entry all support a conclusion that the property is also an attractive nuisance.
2. The fact that the property has been leased to a tenant who is the owner of the mobile home unit does not provide the landowner with a defense to the Notice and Order.

DECISION:

The appeal is DENIED.

ORDER:

No penalty shall be assessed against the appellant if the following actions are taken to bring the property into code compliance within the deadlines stated:

1. Within thirty (30) days of the date of this Order, the accumulated parts, scrap, garbage and debris on the premises have been removed.
2. Within sixty (60) days of the date of this Order, the mobile home on the property has been either brought into compliance with the requirements of the Uniform Housing Code or removed from the site.

ORDERED this 30th day of October, 1996.

Stafford L. Smith, Deputy
King County Hearing Examiner

TRANSMITTED this 30th day of October, 1996, by certified mail, to the following parties:

Electrical Inspections
WA State Dept Labor & Industries
12806 Gateway Drive
Seattle, WA 98168

Peter Linde
King Co. Police
14905 6th Avenue SW
Seattle, WA 98166

King Co. Public Health
Environmental Health Services
1401 Central Ave. S., #101
Kent, WA 98032

William & Trudy Looney
PO Box 66098
Seattle, WA 98166

David Easely
10005 Myers Way South
Seattle, WA 98168

TRANSMITTED this 31st day of October, 1996, to the following:

Ken Dinsmore, DDES/Building Services Division
Bill Turner, DDES/Building Services

The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one days of issuance of the decision.

MINUTES OF THE OCTOBER 29, 1996 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E9600138 - LOONEY:

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were Bill Turner and William Looney.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 Department of Development and Environmental Services Preliminary Report to the King County Hearing Examiner for the October 29, 1996 public hearing
- Exhibit No. 2 Copy of Notice & Order issued April 4, 1996
- Exhibit No. 3 Copy of Supplemental Notice & Order issued August 23, 1996
- Exhibit No. 4 Copy of Appeal received September 6, 1996
- Exhibit No. 5 Inspector's computer log entries (4 pages)
- Exhibit No. 6 Copy of Kroll map page
- Exhibit No. 7 Photos taken on March 28, 1996 and April 21, 1996

SLS:gb
\\code-enf\960\9600138.rpt